Office-Supreme Court, U.S.
FILED
SEP 6 1958
JAMES R. BROWNING, Clerk

LIBRARY
SUPREME COURT, U. S.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER, 1958 TERM

No. 184

WESTLAKE HOSPITAL ASSOCIATION, AN ILLINOIS CORPORATION NOT FOR PROFIT, ALFRED F. AKKERON, WALTER H. YOUNG, EDMUND G. BRUST, JR., EDMUND G. BRUST, SR., EDGAR M. ELBERT AND GUY C. GUERINE,

Appellants,

vs.

EINAR BLIX, WEBSTER D. CORLETT, LAWRENCE MORENO, SAM RUBIN, R. W. SVENDSEN, A. EVERETT JOSLYN, JR., WILLIAM P. O'BRIEN AND GERHART M. COLLATZ,

Appellees.

On Appeal From the Supreme Court of the State of Illinois

REPLY TO APPELLEES' MOTION TO DISMISS OR AFFIRM

ALBERT LANGELUTTIG,
One North La Salle Street, Suite 1300,
Chicago 2, Illinois,
Attorney for Appellants.

JACK JOSEPH,
IRA J. FRIEDMAN,
Of Counsel.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER, 1958 TERM

No. 184

WESTLAKE HOSPITAL ASSOCIATION, AN ILLINOIS CORPORATION NOT FOR PROFIT, ALFRED F. AKKERON, WALTER H. YOUNG, EDMUND G. BRUST, JR., EDMUND G. BRUST, SR., EDGAR M. ELBERT AND GUY C. GUERINE,

Appellants,

vs.

EINAR BLIX, WEBSTER D. CORLETT, LAWRENCE MORENO, SAM RUBIN, R. W. SVENDSEN, A. EVERETT JOSLYN, JR., WILLIAM P. O'BRIEN AND GERHART M. COLLATZ,

Appellees.

On Appeal From the Supreme Court of the State of Illinois

REPLY TO APPELLEES' MOTION TO DISMISS OR AFFIRM

The Appellees, in their motion to dismiss or affirm, have misstated both the holding of the Illinois Supreme Court below and the position of the appellants. As a consequence of their misstatement, their motion is not responsive.

REPLY TO THE "STATEMENT"

On page 2 of their motion, appellees purport to set forth the holding of the Supreme Court of Illinois. In the first place, the board in question had not been "duly elected by the members", and the Illinois Supreme Court did not hold that it was. (The facts with respect to how the board in

question was created are set forth in the opinion below, pp. 19-20 of the Jurisdictional Statement.) Secondly, the statement that the board had, from the date of organization, the right to amend the by-laws under the interpretation of the Illinois Supreme Court, is a dangerous half-truth, since the Illinois court specifically held that, while the board could adopt amendments, the board was required to give notice to the membership and the members "could then, pursuant to the provisions of section 31 of the act of 1872, either modify or amend the directors' amendment, or take no action thereon." (Opinion, p. 27 of Jurisdictional Statement.) With these facts in mind, the importance of the appellees' statement of the Illinois Supreme Court holding that the Directors had this power "exclusively from and after the passage of Section 9" of the 1944 Act (i.e., the power to modify, alter, etc., could be taken away) becomes apparent since this holding immediately raises the constitutional problem.

Reply to the Allegation that the Questions are Not Substantial

The appellees state that appellants are putting the validity of the entire General Not for Profit Corporation Act of Illinois into question for the first time on appeal, and that therefore the question of constitutionality is not properly presented. The appellants are not questioning the validity of the entire act, and it is difficult to ascertain how the appellees, after having read the Jurisdictional Statement, can come to such a conclusion. Perhaps the fact that appellants cited the entire statute at one point and reprinted most of it in the appendix to the Jurisdictional Statement misled the appellees. To make it perfectly clear, appellants are challenging those sections of the Act interpreted by the Illinois Supreme Court to give the power to the

Board of Directors to take voting and other rights away from the membership, and only those sections.

Reply to the Allegation that the Questions Presented are Not Substantial

The appellees charge that the Jurisdictional Statement does not point out any legislative enactment which impaired the appellants' contracts. This charge comes immediately after the charge that appellants challenged a complete statutory enactment for the first time on appeal. First the appellees see too much, and then they cannot see anything. The charge made here is unworthy of further response.

The appellees then go on to say that appellants' statement is defective because "control" is not defined, whereupon appellees provide their own definition of control as the day-to-day management of a corporation by the directors, and conclude that the members could not be entitled to any such kind of "control". Appellants are not disputing over a question as to who has a right to manage the daily affairs of a corporation, but rather about who has a right to elect directors, make changes in the by-laws, and lay down the fundamental policy of the corporation. Appellees do not direct themselves to the issue set forth by appellants in their Jurisdictional Statement.

The appellees assert that the donors to the American Red Cross and the National Polio Foundation, among other organizations, have no right to "control" of the organization. In the sense of managing the distribution of the funds, this statement is true. But the donors might well be able to object if the funds contributed to the Red Cross could be diverted to other hands or other purposes. In any case, the gifts which made Westlake possible were given upon the specific conditions and contracts created by the certificate of incorporation and original by-laws, as the evidence makes clear.

The appellees further state the appeal should fail because charitable corporations are creatures of the state and should be regulated and controlled by the state. Appellants surely agree, but must add that the power to regulate and control must constitutionally be limited to reasonable exercises of legitimate police powers, and not the wholesale, arbitrary deprivation of rights such as was suffered by the appellants in this cause.

THE ALLEGATION THAT THE DECISION BELOW WAS CORRECT

In this section, the appellees appear to be arguing that the legislature constitutionally has such plenary control over not-for-profit corporations that the legislature may even act unreasonably, arbitrarily and capriciously to deprive members of their rights. The New York courts do not go so far as the appellees would like to pretend, *Re Flushing Hospital,* 27 N.Y.S. 2d 207, aff'd 262 A. D. 749 (1941), and the appellees' argument is contrary to reason and justice. No case cited by appellees supports their cavalier statements, and appellants submit that they have demonstrated the verity of their position in their Jurisdictional Statement.

Respectfully submitted,

ALBERT LANGELUTTIG,
One North La Salle Street, Suite 1300,
Chicago 2, Illinois,
Attorney for Appellants.

JACK JOSEPH,
IRA J. FRIEDMAN,
Of Counsel.